

**Kobre & Kim's Government
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Investors Should Be Mindful of New Aggressive South Korean Crypto Regulation and Enforcement

Under Korea's 2024 Virtual Asset User Protection Act (the "Act"), crypto investors and traders active in Korea face significant regulatory risk. While many applaud its proactive effort to combat market manipulation in virtual asset trading, others express concerns over its broad definitions and potential impact on common market-making activities legitimately used in other financial markets. We explain how potential targets can prepare for arising risks during this period of transition.

Under Korea's 2024 Virtual Asset User Protection Act (the "Act"), crypto investors and traders active in Korea face significant regulatory risk. In light of crypto trading volumes doubling between September and October 2024 -- from ₩5.45 to 9.56 trillion -- the Korean Financial Services Commission (FSC) pushed forward new regulations to address increased market risk. While many applaud its proactive effort to combat market manipulation in virtual asset trading, others express concerns over its broad definitions and potential impact on common market-making activities legitimately used in other financial markets.

The statute's broad use of the term "market making," without further guidance or established precedent, means practices that may be common and acceptable elsewhere (including within Korean securities markets) could now be prohibited or subject to heightened scrutiny and enforcement.

Crypto exchanges' mandatory reporting requirements provide the FSC with the trading information to monitor and question market activities. While greater oversight may not be negative, these new transaction costs may have a disproportionate impact on high-frequency trading in the crypto industry and on other traders and dealers.

This raises serious concerns about the future of the country's thriving crypto economy and the extent of authorities' enforcement actions. While there have been several reports in the media on some market participants being investigated for potential violation of the new regulations, it remains unclear how far regulators and prosecutors will go in defining boundaries and whether these interpretations will hold up in court. With the first set of defendants formally indicted last week, market participants should pay attention to the development of jurisprudence around this new area of law and its impact on the market.

During this period of transition and uncertainty, potential targets looking to continue trading and assert their rights should consider the following:

1. **Know the Rules.** To mitigate investigations or compliance risks, companies with ties to the Korean crypto market should be mindful of the potentially broad definitions of various activities subject to regulatory scrutiny, especially as the scope of enforcement continues to evolve. Understanding these new rules and how they cover relevant market activities can not only diminish compliance risks, but also better equip companies to proactively combat hostile investigations.
2. **Be Prepared.** Companies should maintain detailed records of trades and investment strategies as well as broader business considerations, especially those impacting other jurisdictions. As investigations amp up, clear documentary evidence and justifications can prove critical when dealing with enforcement authorities.
3. **Be Proactive.** Potential targets should develop a strategy that addresses authorities' questions and helps regulators gain a deeper understanding of their business and the market context. While many continue to speculate on the long-term impact of the Act, fostering constructive dialogue and consideration of diverse market perspectives may yield positive results. After all, the Act is designed to protect investors and promote security and transparency.

As regulators increase oversight over the growing crypto and virtual asset space in Korea and authorities ramp up enforcement efforts, crypto market participants should expect increased regulatory scrutiny over their trading activities. Rather than wait for an inquiry and react at that time, prudent participants should prepare in advance to engage in productive and proactive tactics to protect their rights and value of their investment.

About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct.

Our team:

- Formulates and executes cross-border strategies across global jurisdictions, including Brazil, BVI, Cayman, Cyprus, Delaware, Dubai, Hong Kong, Israel, Korea, New York, and the PRC.
- Has served as lead counsel in prominent enforcement actions, including those involving cryptocurrency enforcement, securities law, market manipulation, bribery and corruption, antitrust and competition, economic sanctions, asset forfeiture, money laundering, extradition, fraud and other misconduct; and
- Includes native Korean-speaking lawyers from Seoul, the U.S., and other locations who assist clients in dealing with regulatory and criminal authorities such as the Financial Supervisory Service and the Public Prosecutors' Office.